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MS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/449,093 11/24/99 HARTAL

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EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

01/11/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/449,093

Applicant(s)

Hartal et al

Examiner

Curtis E. Sherrer

Group Art Unit

1761



☒ Responsive to communication(s) filed on Oct 30, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-40 is/are pending in the application

Of the above, claim(s) 29-40 is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☒ received in Application No. (Series Code/Serial Number) 08/184,382.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Part III DETAILED ACTION

Election/Restriction

1. Claims 29-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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4. Claims 1 to 25 and 28 to are rejected under 35 U.S.C. § 102(b)/102(e) as being anticipated by Graves et al (USPN 5,245,095) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

5. Claims 1 to 3, 5, 14 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tonnuci et al (Jnl. of Agricultural and Food Chemistry) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

6. Claims 1 to 3, 5, 17 and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Iwatsuki et al. (Plant Cell Physiology, Abstract) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

7. Claims 8, 9 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dale et al. (Jnl. of Food Sci.) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

8. Claims 1 to 3, 5 to 7, 15 to 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Brumlick et al. (U.S. Pat. No. 4,181,743) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

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9. Claims 1 to 3, 5, 6 and 13 to 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Szabo et al. (U.S. Pat. No. 3,864,504) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

10. Claims 1 to 5 and 14 to 20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bradley (U.S. Pat. No. 4,670,281) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

12. Claims 1 to 5, 7 and 13 to 22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lang (U.S. Pat. No. 5,229,160) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

Claim Rejections - 35 USC § 103

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13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 26 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Graves et al. in view of Horn et al (U.S. Pat. No. 4,726,955) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

15. Claims 1 to 5, 7 and 13 to 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lang in view of Brumlick et al. for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

16. Claims 4, 6 to 13, 15, 16 and 18 to 28 are rejected under 35 U.S.C. § 103 as being unpatentable Tonnuci et al (Jnl of Agricultural and Food Chemistry) in view of Dale et al. (Jnl. of Food Sci) for the reasons set forth in the last Office Action of U.S. Application No. 08/507,632.

Conclusion

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17. No claim is allowed.

18. This is a CIP of applicant's earlier Application No. 08/507,632. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

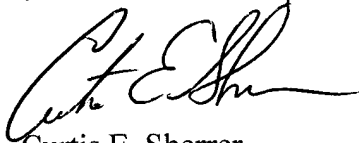
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The fax phone number for this Group is (703)-305-3602.

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20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read "Curtis E. Sherrer". The signature is fluid and cursive, with the first name "Curtis" and last name "Sherrer" clearly distinguishable.

Curtis E. Sherrer
Primary Examiner
January 9, 2001